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HOUSE BILL 390

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Rory J. Ogle

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE CLANDESTINE DRUG
LABORATORY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Clandestine Drug Laboratory Act".

Section 2. DEFINITIONS.--As used in the Clandestine Drug
Laboratory Act:

A. "clandestine drug laboratory" means real
property on which controlled substances are being manufactured
or where a person is arrested for having on any real property
chemicals or equipment used in manufacturing controlled
substances. In the case of a space-rental mobile home or
recreational vehicle park, "clandestine drug laboratory" means
the mobile home or recreational vehicle in which controlled

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1 substances are being manufactured or where a person is arrested
2 for having in the mobile home or recreational vehicle chemicals
3 or equipment used in manufacturing controlled substances;

4 B. "controlled substance" means a drug or substance
5 listed in Schedules I through V of the Controlled Substances
6 Act or rules adopted thereto;

7 C. "drug laboratory site remediation firm" means a
8 firm that is licensed by the department of public safety and
9 that performs remediation of residual contamination from the
10 manufacture of controlled substances or the storage of
11 chemicals or equipment used in manufacturing controlled
12 substances;

13 D. "gross contamination" means the chemicals,
14 equipment and other items that are found in a clandestine drug
15 laboratory and that are removed by a law enforcement agency or
16 other agency;

17 E. "real property" means the area within a
18 structure and surrounding the structure that is within the land
19 boundary or property lines of any of the following:

20 (1) property that is used primarily for
21 residential purposes;

22 (2) a mobile home; or

23 (3) a recreational vehicle; and

24 F. "residually contaminated portion of the real
25 property" means the structure or unit where gross contamination

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1 was removed and the area of any adjacent structure, unit or
2 land where visible evidence of residual contamination is
3 observed by a peace officer.

4 Section 3. CLANDESTINE DRUG LABORATORIES.--

5 A. If a peace officer discovers a clandestine drug
6 laboratory or arrests a person for having on any real property
7 chemicals or equipment used in manufacturing a controlled
8 substance or a derivative of a controlled substance, the peace
9 officer shall:

10 (1) at the time of the discovery or arrest,
11 deliver a copy of the notice of removal pursuant to Subsection
12 B of this section to the owner of the real property if the
13 owner is on the site at the time of delivery, the on-site
14 manager if the manager is on the site at the time of delivery
15 or the on-site drop box, if available. In the case of a
16 tenant-owned unit in a space-rental mobile home or recreational
17 vehicle park, the officer shall deliver a copy of the notice of
18 removal to the occupant of the unit if the occupant is on the
19 site at the time of delivery and to the on-site park landlord
20 if the park landlord is on the site at the time of delivery;

21 (2) within two business days after the
22 discovery or arrest, send the notice of removal by certified
23 mail to the owner of the real property and the owner's on-site
24 manager or, in the case of a space-rental mobile home or
25 recreational vehicle park, to the owner of the mobile home or

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1 recreational vehicle, if applicable, and to the park landlord.
2 These persons are deemed to receive the notice of removal five
3 days after the notice is mailed. The notice of removal shall
4 also be sent to the following:

5 (a) the owner's address on file with the
6 county assessor. The county shall waive any fee or charge for
7 the owner's address information;

8 (b) the county health department; and

9 (c) the appropriate local fire
10 department;

11 (3) after a law enforcement agency or other
12 agency removes the gross contamination on the real property,
13 order the removal of all persons from the residually
14 contaminated portion of the real property or dwelling unit, if
15 applicable, or, in the case of a space-rental mobile home or
16 recreational vehicle park, from the unit located on the real
17 property; and

18 (4) after the peace officer removes all
19 persons pursuant to Paragraph (3) of this subsection, affix the
20 notice of removal in a conspicuous place on the real property
21 or, in the case of a space-rental mobile home or recreational
22 vehicle park, on the unit located on the real property. The
23 notice of removal shall state that it is unlawful for any
24 person other than the owner, landlord or manager to enter the
25 residually contaminated portion of the real property until the

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1 owner remediates the residually contaminated portion of the
2 real property.

3 B. The notice of removal shall be in writing and
4 shall contain all of the following:

5 (1) the word "WARNING" in large bold type at
6 the top and bottom of the notice;

7 (2) a statement that a clandestine drug
8 laboratory was seized or a person was arrested on the real
9 property for having chemicals or equipment used in the
10 manufacturing of a controlled substance on the real property;

11 (3) the date of the seizure or arrest;

12 (4) the address or location of the real
13 property, including the identification of any dwelling unit,
14 room number, apartment number or vehicle number;

15 (5) the name of the law enforcement agency or
16 other agency that seized the clandestine drug laboratory or
17 made the arrest and the agency's contact telephone number;

18 (6) a statement that hazardous substances,
19 toxic chemicals or other waste products may still be present on
20 the real property or, in the case of a space-rental mobile home
21 or recreational vehicle park, in the unit located on the real
22 property;

23 (7) a statement that it is unlawful for any
24 unauthorized person to enter the residually contaminated
25 portion of the real property or, in the case of a space-rental

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1 mobile home or recreational vehicle park, the unit located on
2 the real property, until the owner, landlord or manager
3 establishes that the portion of the real property noticed as
4 residually contaminated has been remediated by a drug
5 laboratory site remediation firm;

6 (8) a statement that it is a fourth degree
7 felony to violate this section;

8 (9) a statement that it is a misdemeanor to
9 disturb the notice of removal posted on the real property;

10 (10) a statement that the owner of the real
11 property shall remediate the residually contaminated portion of
12 the real property in compliance with Subsection C of this
13 section; and

14 (11) a statement that if an owner fails to
15 provide any notice required by this section, the owner is
16 subject to a civil penalty and a buyer, tenant or customer may
17 void a purchase contract, rental agreement or other agreement.

18 C. The owner of the real property shall remediate
19 the residually contaminated portion of the real property by
20 retaining a registered drug laboratory site remediation firm.

21 D. A drug laboratory site remediation firm that
22 remediates the residually contaminated portion of any real
23 property pursuant to this section shall comply with the
24 requirements established and the best practices and standards
25 for remediation of residual contamination. When remediation is

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1 complete, the drug laboratory site remediation firm shall
2 remove the posted notice and shall issue a document stating
3 that the residually contaminated portion of the real property
4 has been remediated. Within twenty-four hours after the
5 remediation is complete, the drug laboratory site remediation
6 firm shall deliver the document or send the document by
7 certified mail to each person and entity listed in Paragraph
8 (2) of Subsection A of this section, and to the law enforcement
9 agency that issued the notice of removal pursuant to that
10 subsection. After the document has been issued, both of the
11 following apply:

12 (1) the owner, landlord or manager of the real
13 property is not required to comply with Subsection F of this
14 section; and

15 (2) any person may use, enter, occupy, rent or
16 sell the real property.

17 E. The county health department shall maintain and
18 make available on request any documents that are received
19 pursuant to Subsection D of this section.

20 F. The following notice requirements apply until
21 the remediation is complete as provided in Subsection D of this
22 section:

23 (1) within five days after a buyer signs a
24 contract to purchase the real property, the owner shall notify
25 the buyer in writing that methamphetamine, ecstasy or LSD was

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1 manufactured on the real property or that an arrest was made
2 pursuant this section. The buyer shall acknowledge receipt of
3 the notice. A buyer may cancel the real estate purchase
4 contract within five days after receiving the notice. If the
5 owner does not comply with this paragraph, the buyer may cancel
6 the purchase contract;

7 (2) the landlord shall notify a prospective
8 tenant of a dwelling unit that was the subject of the notice in
9 writing that methamphetamine, ecstasy or LSD was manufactured
10 on the real property or that an arrest was made pursuant to
11 this section. The tenant shall acknowledge receipt of the
12 notice before taking possession of the real property or before
13 signing a rental agreement for the real property. The notice
14 shall be attached to the rental agreement. If the landlord
15 does not comply with this paragraph, the tenant may void the
16 rental agreement;

17 (3) before a customer occupies a room that was
18 the subject of the notice, the owner or manager shall notify
19 the customer in writing that a controlled substance was
20 manufactured in the room or that an arrest was made pursuant to
21 this section. If the owner or manager does not comply with
22 this paragraph, the customer may void the agreement;

23 (4) the owner shall notify a buyer or
24 prospective tenant in writing that a controlled substance was
25 manufactured in the mobile home or recreational vehicle or that

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1 an arrest was made pursuant to this section. The buyer shall
2 acknowledge receipt of the notice before taking possession of
3 the mobile home or recreational vehicle. A buyer may cancel
4 the purchase contract within five days after receiving the
5 notice. The tenant shall acknowledge receipt of the notice
6 before taking possession of the mobile home or recreational
7 vehicle or before signing a rental agreement for the mobile
8 home or recreational vehicle. The notice shall be attached to
9 the rental agreement. If the owner does not comply with this
10 paragraph, the tenant may void the rental agreement; and

11 (5) if a mobile home or recreational vehicle
12 in a space-rental park contains a clandestine drug laboratory,
13 the landlord, on receipt of a notice pursuant to this section,
14 shall notify the lienholder of record and the owner of record
15 of the unit to remove it from the park within thirty days. If
16 the unit is not removed within thirty days, the landlord may
17 remove or demolish the unit and dispose of it as junk and shall
18 notify the department of transportation of the demolition. A
19 landlord that complies with this subsection is not liable for
20 such action.

21 G. If an owner fails to provide any notice required
22 by this section, the owner is subject to a civil penalty of one
23 thousand dollars (\$1,000) and is liable for any harm resulting
24 from the owner's failure to comply with the requirements of
25 this section.

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1 H. A person who operates a clandestine drug
2 laboratory and who is not the owner of the real property shall
3 pay restitution to the owner of the real property for all costs
4 that the owner incurred to remediate the property.

5 Section 4. PENALTIES.--

6 A. A person who knowingly violates an order or
7 notice of removal that is issued by a peace officer under this
8 section is guilty of a fourth degree felony.

9 B. A person who knowingly disturbs a notice of
10 removal posted on the real property is guilty of a misdemeanor.

11 Section 5. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2004.

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